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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 e.Digital Corporation,

13 Plaintiff,

14 v.

15 Kingfast SSD; Shenzhen New Kingfast
16 Storage Technology Co., Ltd.,

17 Defendants.
18

'15CV0329 BAS WVG

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

19 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its
20 undersigned counsel, complains and alleges against Defendant Kingfast SSD and
21 Defendant Shenzhen New Kingfast Storage Technology Co., Ltd. (collectively
22 referred to hereafter as “Kingfast” or “Defendant” or “Defendants”) as follows:

23 **NATURE OF THE ACTION**

24 1. This is a civil action for infringement of a patent arising under the
25 laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including,
26 without limitation, 35 U.S.C. §§ 271, 281. Plaintiff e.Digital seeks a preliminary
27 and permanent injunction and monetary damages for the infringement of its U.S.
28 Patent No. 5,839,108.

1 including but not limited to customers, consumers, and/or end-users located within
2 the State of California.

3 **PARTIES**

4 6. Plaintiff e.Digital is a Delaware corporation with its headquarters and
5 principal place of business at 16870 West Bernardo Drive, Suite 120, San Diego,
6 California 92127.

7 7. Upon information and belief, Defendant Kingfast SSD is a
8 corporation registered and lawfully existing under the laws of Canada, with an
9 office and principal place of business located at 44-1755 Rathburn Rd E
10 Mississauga, ON, Canada.

11 8. Upon information and belief, Defendant Shenzhen New Kingfast
12 Storage Technology Co., Ltd. is a business entity organized and existing under the
13 laws of the People's Republic of China ("China"), with an office and principal
14 place of business located at B601,Rongchao Binhai Building,Tower B, Xinghua
15 Road, Bao'an New Center, District, Shenzhen,ChinaPeople's Republic of China.

16 9. Upon information and belief, Defendant Kingfast SSD and Defendant
17 Kingfast Storage Technology Co., Ltd. are partners with respect to the accused
18 products.

19 10. Upon information and belief, Defendant Kingfast SSD acts a
20 distributor and e-retailer for Defendant Kingfast Storage Technology Co., Ltd. with
21 respect to the accused products.

22 **THE ASSERTED PATENT**

23 11. On November 17, 1998, the United States Patent and Trademark
24 Office duly and legally issued United States Patent No. 5,839,108 ("the '108
25 patent") entitled "Flash Memory File System In A Handheld Record And Playback
26 Device," to its named inventors Norbert P. Daberko and Richard K. Davis.
27 Plaintiff e.Digital is the assignee and owner of the entire right, title and interest in
28 and to the '108 patent and has the right to bring this suit for damages and other

1 relief. A true and correct copy of the '108 patent is attached hereto as Exhibit A.

2 **COUNT ONE**

3 **INFRINGEMENT OF THE '108 PATENT BY DEFENDANT**

4 12. Plaintiff re-alleges and incorporates by reference each of the
5 allegations set forth in paragraphs 1 through 8 above.

6 13. The accused products include but are not limited to Defendant's Flash
7 Memory Storage products including but not limited to its C Series mSATA and
8 SATA products; E Series SATA products; I Series Half Slim SATA, mSATA, and
9 SATA products; and, PATA SSD products and/or NAND Controller products. The
10 primary and substantial purpose of the accused products is to write to and store
11 data in electronic format in non-volatile flash memory.

12 14. Defendant has directly and indirectly infringed and is directly and
13 indirectly infringing Claim 1 of the '108 patent in violation of 35 U.S.C. § 271, *et*
14 *seq.*, by making, using, offering for sale, selling in the United States and/or
15 importing into the United States without authority, the accused products identified
16 above. Claim 1 of the '108 patent teaches a method of memory management for a
17 non-volatile storage medium. The method comprises several steps, which generally
18 involves, without limitation, writing electronic data segments from volatile,
19 temporary memory to a non-volatile, long-term storage medium by linking data
20 segments according to a number of specified steps.

21 15. Plaintiff alleges that at least as of the date of the filing of the
22 originally filed complaint in this matter, if not sooner, Defendant knew or should
23 have known of the existence of Claim 1 of the '108 patent and the fact that the
24 accused products infringe said Claim 1.

25 16. Plaintiff alleges that Defendant sold, sells, offers to sell, ships, or
26 otherwise delivers the accused products to customers or end-users with all the
27 features required to infringe Claim 1 of the '108 patent. Upon information and
28 belief, Defendant knows that the accused products infringe Claim 1 of the '108

1 patent and intends to induce third parties to include its customers and end-users to
2 also infringe Claim 1 of the '108 patent.

3 17. Upon information and belief, the accused products, alone or in
4 combination with other products, directly or, alternatively, under the doctrine of
5 equivalents practice each of the limitations of independent Claim 1 of the '108
6 patent when they are used for their normal and intended purpose of writing to and
7 storing electronic data on non-volatile memory. Thus, Defendant directly infringes
8 Claim 1 of the '108 patent in violation of 35 U.S.C. § 271(a) when it demonstrates,
9 tests or otherwise uses the accused products in the United States.

10 18. By way of example, certain website(s) publish the Defendants'
11 datasheets and descriptions of the features and functionality of the accused
12 products. Upon information and belief, customers and end-users are provided
13 information in such publications concerning how to use of the accused products in
14 a way that infringes Claim 1. Such conduct evidences Defendant's act of direct
15 infringement of Claim 1 of the '108 patent.

16 19. Plaintiff also alleges on information and belief that Defendant uses,
17 makes, sells, offers to sell and/or imports the accused products knowing that they
18 will be used by its customers and end-users for writing and storing electronic data
19 to non-volatile memory utilizing the steps described in Claim 1 of the '108 patent.
20 Defendant's product literature, datasheets, downloads, instructional materials,
21 brochures, and other informational materials and encourage customers to use the
22 accused product(s) knowing that the accused products utilize the methods of
23 memory management taught by Claim 1 of the '108 patent and in a manner it
24 knows infringes upon Claim 1 of the '108 patent.

25 20. Defendant also provides instructional and/or informational material
26 that instruct customers and end-users on how to connect the accused products and
27 use them as non-volatile storage devices for electronic data. Among other things,
28 Defendant's informational materials lay out step-by-step instructions on how to

1 write data into the memory of the accused products – a process that utilizes the
 2 method disclosed in Claim 1 of the '108 patent and which Defendant knows (at the
 3 least as of the filing of the original complaint if not sooner) infringes the method
 4 taught in Claim 1 of the '108 patent. Plaintiff believes that Defendant directs
 5 consumers and end-users to consult and utilize such instructional material.

6 21. Plaintiff believes and thereupon alleges that Defendant is aware that
 7 its customers and end-users are using the accused products in an infringing manner
 8 based on, among other things, the fact that Defendant encourages its customers and
 9 end-users to use the accused products in an infringing manner as set forth in the
 10 preceding Paragraphs.

11 22. As alleged above, incorporated herewith, and based upon information
 12 and belief, Plaintiff alleges that Defendant, without authority, has induced and
 13 continues to induce infringement of the '108 patent in violation of 35 U.S.C. §
 14 271(b) inasmuch as:

- 15 a. The accused products infringe Claim 1 during the normal use of
- 16 the accused products by Defendant's customers and/or end-users;
- 17 b. Defendant has known and has been continuously aware of the
- 18 '108 patent since at least the filing of the original complaint in this
- 19 action, if not sooner;
- 20 c. Defendant has acted in a manner that encourages and continues to
- 21 encourage others to infringe Claim 1 of the '108 patent by, among
- 22 other things, intentionally instructing and/or encouraging
- 23 customers and end-users to use the accused products in a manner
- 24 that Defendant knows or should have known would cause them to
- 25 infringe the '108 patent;
- 26 d. Defendant sells, distributes, and supplies the accused products to
- 27 customers and end-users with the intent that the products be used
- 28 in an infringing manner;

- e. Defendant provides instructional and/or informational material designed to instruct customers and end-users to use the products in an infringing manner; and,
- f. Defendant advertises, markets, and promotes the use of the accused products in an infringing manner.

23. As alleged above, incorporated herewith, and based upon information and belief, Plaintiff alleges that Defendant has contributed and continues to contribute to the infringement of Claim 1 of the '108 patent in violation of 35 U.S.C. § 271(c) inasmuch as:

- a. The accused products infringe Claim 1 of the '108 patent during the normal use of the accused products by Defendant's customers and/or end-users;
- b. Defendant has known and has been continuously aware of the '108 patent since at least the filing of the original complaint in this action, if not sooner;
- c. Defendant imports into the United States, sells and/or offers to sell within the United States products that (a) practice the method of memory management of Claim 1 of the '108 patent; and, (b) Defendant knows that the same constitute material infringing component(s) of the accused products, which were made and/or especially adapted for use in the accused products;
- d. The memory management component(s) and methods of the accused products are not staple articles of commerce suitable for substantial non-infringing use with respect to the '108 patent; and,
- e. Defendant sells, has sold, and/or has supplied the accused products knowing of Plaintiff's '108 patent and knowing that the accused products incorporate Plaintiff's patented method and/or were specially adapted for use in a way which infringes the '108

1 patent.

2 24. As alleged above, Plaintiff alleges that Defendant had notice of the
3 '108 patent and knowledge of infringement of Claim 1 of the '108 patent since at
4 least the filing of the original complaint in this matter, if not sooner. Defendant has
5 and continues to sell products that practice the '108 patent after acquiring
6 knowledge of infringement.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for relief and judgment as follows:

9 1. That Defendants be declared to have infringed the Patent-in-Suit;

10 2. That Defendants, Defendants officers, agents, servants, employees,
11 and attorneys, and those persons in active concert or participation with them, be
12 preliminarily and permanently enjoined from infringement of the Patent-in-Suit,
13 including but not limited to any making, using, offering for sale, selling, or
14 importing of unlicensed infringing products within and without the United States;

15 3. Compensation for all damages caused by Defendants' infringement of
16 the Patent-in-Suit to be determined at trial;

17 4. A finding that this case is exceptional and an award of reasonable
18 attorneys fees pursuant to 35 U.S.C. § 285;

19 5. Granting Plaintiff pre-and post-judgment interest on its damages,
20 together with all costs and expenses; and,

21 6. Awarding such other relief as this Court may deem just and proper.

22 **HANDAL & ASSOCIATES**

23 Dated: February 17, 2015

24 By: /s/Anton N. Handal
25 Anton N. Handal
26 Pamela C. Chalk
27 Gabriel G. Hedrick
28 Attorneys for Plaintiff
e.Digital Corporation

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

HANDAL & ASSOCIATES

Dated: February 17, 2015

By: /s/Anton N. Handal
Anton N. Handal
Pamela C. Chalk
Gabriel G. Hedrick
Attorneys for Plaintiff
e.Digital Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on this date to all counsel of record, if any to date, who are deemed to have consented to electronic service via the Court's CM/ECF system per CivLR 5.4(d). Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery upon their appearance in this matter.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 17th day of February, 2015 at San Diego, California.

HANDAL & ASSOCIATES

Dated: February 17, 2015

By: /s/Anton N. Handal
Anton N. Handal
Pamela C. Chalk
Gabriel G. Hedrick
Attorneys for Plaintiff
e.Digital Corporation